IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.15380 of 2022
and W.M.P.Nos.14531 & 14532 of 2022

M/s.Sunbright Fashions India Pvt. Ltd.,
Represented by its Managing Director,
R.Ganesan,
B-14, Thiru-Vi-Ka Industrial Estate,
Guindy, Chennai - 600 032. ... Petitioner

Vs.

The Deputy Commissioner of Customs (BRC-DBK),
Chennai IV Commissionerate,
Customs House, 60, Rajaji Salai,
Chennai - 600 001. ... Respondent

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari, to call for records pertaining to the impugned Order-in-Original No.82465/2021 dated 27.03.2021 in F.No.S.Misc/2/251/2016-DBK of the respondent and quash the same.

For Petitioner : Mr.Hari Radhakrishnan

For Respondent : Mrs.R.Hemalatha
Senior Standing Counsel

ORDER

The petitioner has challenged the impugned assessment Order-in-Original No.82465/2021 dated 27.03.2021 in F.No.S.Misc/2/251/2016-DBK by the respondent seeking demand a sum of Rs.43,65,403/- in respect of 154 shipping bills on which the petitioner had claimed duty draw back under provisions of Section 75A (2) of the Customs Act, 1962 read with Section 16 of the Customs and Central Excise Duties Drawback Rules, 1995.

2. The impugned order states that the petitioner was issued with a Show Cause Notice dated 22.03.2017 vide F.No.S.Misc.2/251/2016-BRC (DBK) to which the petitioner has not replied and therefore, the impugned order has been passed confirming the demand to recover the duty draw back that was sanctioned on 154 shipping bills as detailed in the impugned order.

3. Assailing the impugned order, the learned counsel for the petitioner would submit that the petitioner had neither received

the Show Cause Notice dated 22.03.2017 nor a notice calling upon the petitioner to appear for a personal hearing. It is further submitted by the learned counsel that the impugned order was served on the petitioner's sister concern and it is only thereafter, the petitioner came to know that the impugned order has been passed by the respondent. Hence, the petitioner is rushed to this Court to quash the same.

4. That apart, the learned counsel appearing for the petitioner submits that there is non-application of mind in as much as the petitioner has given the details of the Bank Realization Certificate, Negative Statements, Consolidated Statements of Bank Realization Certificate, duly attested by the Charted Accountant as early as on 22.02.2011 in respect of 233 shipping bills by giving details of the relevant Bank Realisation Certificate which was acknowledged by the respondent as early as on 01.03.2011. Despite the same, the respondent has confirmed the amount proposed in the aforesaid notice dated 22.03.2017 in respect of 154 shipping bills out of 233 shipping bills in respect of which the petitioner had given the aforesaid statement vide letter dated 22.02.2011 duly acknowledged

by the respondent on 01.03.2011.

5. Defending the impugned order, the learned counsel for the respondent submit that the petitioner has failed to participate in the proceedings and therefore, the respondent has left with no other option expect to confirm the demand proposed in the impugned order, dated 27.03.2021.

6. I have considered the arguments advanced by the learned counsel for the petitioner and the learned Senior standing counsel for the respondent. I have also considered the affidavit and the counter affidavit filed by the respondent and perused the contents of the letter dated 22.02.2011. The aforesaid letter of the petitioner has been acknowledged by the Office of the respondent bears a seal and signature dated 01.03.2011.

7. In the aforesaid letter, the petitioner has furnished the details of Bank Realization Certificate, Negative Statements, Consolidated Statement of Bank Realization

Certificate duly attested by the Charted Accountant. This aspect has not been considered by the respondent. The respondent has merely passed a non-speaking order as the respondent had no other documents before it, at the time of passing of the impugned order.

8. Considering the above, the impugned order is set aside and the case is remitted back to the respondent. The petitioner is directed to furnish a copy of the aforesaid letter dated 22.02.2011 together with all the annexures to the respondent within a period of 30 days from the date of receipt of a copy of this order. On receipt of such representation being furnished, the respondent shall consider the same and pass a fresh order on merits and in accordance with the law after providing an opportunity of personal hearing to the petitioner, within a period of two months thereafter. The entire proceedings shall be completed within a period of three months from the date of receipt of a copy of this order. The respondent is further directed to give the petitioner an opportunity of personal hearing before the orders are being passed.

9. With the above directions, this Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

17.08.2023

Index : Yes/No
Internet : Yes/No by the
Speaking Order/Non-Speaking Order
Neutral Citation : Yes/No

gba

To

The Deputy Commissioner of Customs (BRC-DBK),
Chennai IV Commissionerate,
Customs House, 60, Rajaji Salai,
Chennai - 600 001.

C.SARAVANAN, J.
gba

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